

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**CHAMBERS OF
MADELINE COX ARLEO
UNITED STATES MAGISTRATE JUDGE**

**MARTIN LUTHER KING COURTHOUSE
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October 18, 2007

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LETTER ORDER

**Re: Hemphill v. Rogers, et al.
Civil Action No. 07-2162 (JAG)**

Dear Mr. Hemphill and Counsel:

Before me is plaintiff's Motion to Amend the Complaint (Docket Entry No. 11) and plaintiff's Motion to Have the United States Marshals Service serve the proposed Amended Complaint on defendants. (Docket Entry No. 12). The Court has received no opposition from defendants. No oral argument was heard pursuant to Fed. R. Civ. P. 78.

For the reasons set forth below, plaintiff's motions are granted. The pending Motions to Dismiss (Docket Entry Nos. 14, 28, and 32) are dismissed without prejudice.

The plaintiff's claims against defendants arise out of plaintiff's alleged exposure to second hand smoke as a prisoner at the Adult Diagnostic and Treatment Center in Avenel, New Jersey. Presently pending are the motions to dismiss by corporate defendants Lorillard Tobacco Company (Docket Entry No. 14); Lane Limited, Brown & Williamson Tobacco Company and R.J. Reynolds Tobacco Company (Docket Entry No. 28); and Phillips Morris Incorporation (Docket Entry No. 32).

In his motion to amend, Plaintiff seeks to remove defendant Keefe Industries and to add "M. Bernstein & Sons and Newark Tobacco and Candy Company" as defendants. Plaintiff has filed a second motion, seeking to have the United States Marshals Service serve a copy of his proposed Amended Complaint on defendants. As noted above, the Court has received no opposition to either motion.

Rule 15 provides that motions for leave to amend shall be freely granted in the interest of justice. The District Court will ultimately determine whether plaintiff's complaint fails to state a claim. However, since the district court has yet to rule on the pending motions to dismiss and in light of the liberal standards for amendments, the Court will grant plaintiff's Motion to Amend the Complaint (Docket Entry No. 11). The Court also will grant plaintiff's Motion to have the United States Marshals Service serve the Amended Complaint upon "M. Bernstein & Sons and Newark Tobacco and Candy Company" and all other defendants (Docket Entry No. 12). Furthermore, the Court will dismiss without prejudice all the pending above-referenced motions to dismiss (Docket Entry Nos. 14, 28 and 32). Defendants shall refile the motions and address all claims set forth in the Amended Complaint.

The Clerk of the Court is directed to file the Amended Complaint (Docket Entry No. 11-2) in the above action. The Clerk is further directed to issue a Summons, and the United States Marshal shall serve a copy of the Amended Complaint, Summons and this Order upon "M. Bernstein & Sons and Newark Tobacco and Candy Company" and all other defendants, pursuant to 28 U.S.C. §1915(d), with all costs of service advanced by the United States. In addition, defendants shall file and serve a responsive pleading within the time specified in Federal Rule of Civil Procedure 12(a), pursuant to 42 U.S.C. §1997e (g)(2).

SO ORDERED.

s/Madeline Cox Arleo

MADELINE COX ARLEO

United States Magistrate Judge

cc: Clerk
Hon. Joseph A. Greenaway, Jr., U.S.D.J.
All Parties
File